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and cases passing on similar statutes covering burglary, Burns' R. S. Ind. 1894, Sec. 1654, would seem unsupportable except upon the ground that the legislatures chose to call the crime of bringing stolen goods into the State the crimes of embezzlement and burglary.

In a recent case in the Circuit Court of Appeals, the Armour Packing Company was indicted for violation of the Elkins Act, U. S. Comp. St. Supp., 1905, p. 599, prohibiting the receipt of any rebate or concession in respect of the transportation of property "whereby any such property shall by any device whatever be transported" and providing for prosecution "in any court of the United States having jurisdiction of crimes within which such violation was committed or through which the transportation may have been conducted." The crime was committed originally in Kansas, and the indictment found in Missouri. The court upheld the constitutionality of the jurisdiction clause on the ground that the offense was a continuing crime. *Armour Packing Co.* v. *United States* (1907) 153 Fed. 1. If the transportation was made an essential element of the crime by the statute, the decision seems sound, since both the receipt of the rebate and the transportation took place in Kansas, and one of these elements existed in Missouri. The court stated two questions: first, whether the crime could be held to continue; second, whether the transportation was an essential element; and after deciding the first considered it unnecessary to decide the second. It seems that the decision of the first necessarily involved a decision of the second.

VIEW BY THE JURY AS EVIDENCE AND NECESSITY OF THE JUDGE'S PRESENCE AT THE VIEW.—The practice of permitting the jury to view premises about which there was a controversy, existed at common law in England at an early period and prior to any statutory enactment on the subject, 3 Bac. Abr. (5th Ed.) tit. Juries *270; Glanville, Bk. 11, c. 1; Bracton, de Leg. et Cons. f. 315; Fitzherbert, Natura Brevium, 123c, 128b, 184e, and the view together with the personal knowledge of the jurors formed the basis of the verdict. A view was long granted as of course after the cause had been brought on to trial, and after the Statute 4 & 5 Ann. c. 16 sec. 8, a view might be granted in civil cases in the first instance previous to the trial. Ld. Mansfield in *Rules for Views* (1757) 1 Burr. 252. Due to the abuses of the view for purposes of delay, Lord Mansfield held that the words of the statute meant that the Court should grant the view only when proper and necessary, and that it was so when "the evidence might not be understood without it." *Rules for Views, supra.* This change in the purpose of the view from a basis for the verdict to an aid in understanding the evidence presented in open court, was in line with the change in the conception of evidence from personal knowledge to facts placed before the jury in court. The fact that it was not necessary for the whole jury to be present at a view seems to militate against a conception of the view as evidence in the modern sense. 3 Bac. Abr. *supra;* Co. Lit. 158, 1. Views are now almost universally permitted by statute, 92 Am. Dec. 342, note; Wigmore, Ev. sec. 1163 and notes, but only when necessary and proper for a better understanding of the evidence. *People* v. *Thorn* (1898) 156 N. Y. 286; *Vane* v. *Evanston* (1894) 150 Ill. 616; *Close* v. *Samm* (1869) 27 Ia

503; *Chute* v. *State* (1872) 19 Minn. 271. It seems to follow that the view itself should not be regarded as evidence, and such is the weight of authority, *Vane* v. *Evanston, supra; Chute* v. *State, supra; Shular* v. *State* (1885) 105 Ind. 289, except in condemnation cases. 7 COLUMBIA LAW REVIEW 432; *Kansas etc. Ry. Co.* v. *Baird* (1889) 41 Kan. 69; *Shultz* v. *Bower* (1894) 57 Minn. 493; *Vane* v. *Evanston, supra.* In jurisdictions taking the opposite view, *People* v. *Milner* (1898) 122 Cal. 171; *Benton* v. *State* (1875) 30 Ark. 328; *Denver Co.* v. *Ditch Co.* (1898) 11 Colo. App. 41, 46; semble, *Tully* v. *R. R. Co.* (1883) 134 Mass. 499, the usual argument is that "it is impossible that a jury could go and view such a place without receiving some evidence through one of their senses, viz., that of sight," *People* v. *Bush* (1886) 68 Cal. 623, and the view is considered as a species of real evidence. *People* v. *Milner, supra; Close* v. *Samm, supra.* But the mere fact of practical probative value is not decisive and since evidence is introduced for the purpose of establishing a fact in issue or relevant to the issue, see Thayer, Prel. Treat. Ev. 263, it seems indefensible to consider as evidence that which is employed solely for the purpose of understanding that evidence.

Since there can be no court without a judge, the inflexible rule in trials in felony that evidence must be given in open court, would demand the presence of the judge at the view, where the view is regarded as evidence. *People* v. *Tupper* (1898) 122 Cal. 424; *O'Brien* v. *People* (1892) 17 Colo. 561. And it would seem that upon principle this could not be waived. *Turbeville* v. *State* (1879) 56 Miss. 793; *Warner* v. *State* (1894) 56 N. J. Law 686. A more difficult question is presented in those jurisdictions in which the view is not regarded as evidence. The main idea pervading a trial for felony is that the trial must be fair and impartial; that the defendant should have thorough security from prejudice; and that the presence of the judge is the greatest guarantee of such security. But the law does not give the defendant the right to the presence of and control by the judge in every step taken in the "trial," in its extensive sense, i. e. from issue joined to verdict rendered; for example, during the progress of the jury to and from their lodgings. It would seem that adequate protection is given the defendant if the judge is present during every step in the substantial proceedings, i. e. during the "trial," using that term in its narrow sense. *O'Brien* v. *People, supra.* Undoubtedly the introduction of evidence and argument are substantial proceedings. *State* v. *Beuerman* (1898) 59 Kan. 586; *Turbeville* v. *State, supra;* cf. *O'Shields* v. *State* (1888) 81 Ga. 301. Because of the practical probative value of a view and its purpose as being analogous to argument in that it is to present true evidentiary facts clearly to the jury, it would seem that it should be regarded as a substantial proceeding and that the judge's presence should therefore be necessary. The underlying reason for the almost uniform conclusion to the contrary is, probably, either that the safeguards and restrictions which surround the jury at the view render the judge's presence practically unnecessary, or a historical reason. In the days when personal knowledge of the jurors formed a basis for the verdict, the judge's presence was, of course, unnecessary. It may be argued, therefore, that the strength of theory alone was not sufficient to produce such a radical change when confronted by lack of precedent and of practical necessity.

Many jurisdictions, even those holding that a view is not evidence, give the defendant the right to be present at the view. *Benton* v. *State, supra; People* v. *Bush, supra; People* v. *Thorn, supra.* Unless it can be said that this is due to the policy of the criminal law to allow the defendant every reasonable privilege, it would seem that a degree of protection to the defendant which demands his presence would also demand control of the proceedings by the judge. Many cases, however, allow the right of the defendant to be present to be waived, even by silence, *People* v. *Thorn, supra; State* v. *Adams, supra,* and in such jurisdictions it would seem that the judge's presence might also be waived. See *State* v. *Adams, supra.* In a recent trial for robbery, the jury, without any objection by the defendant at the time, was allowed to view the premises without the judge. Upon their return the defendant excepted. The court held the view to be evidence and, therefore, correctly, that the judge must be present; but that the defendant had waived this right. *People* v. *White* (Cal. 1907) 90 Pac. 471. Under the foregoing analysis this latter holding seems erroneous as does also the additional ground advanced by the Court that the error was cured by a subsequent view had in the presence of the judge.

STATE IMMUNITY FROM SUIT UNDER THE ELEVENTH AMENDMENT.—The United States Supreme Court has rejected the narrow view of what constitutes a suit against a State, laid down by Chief Justice Marshall in *Osborn* v. *The Bank* (1824) 9 Wheat. 738, that a State is not sued unless a party to the record, *New Hampshire etc.* v. *Louisiana* (1882) 108 U. S. 76; *In Re Ayers* (1887) 123 U. S. 443, and has established in its place the rule that a suit against a State is an action in which the adverse interest is in the State, against whom alone relief is asked and judgment will effectively operate. *In Re Ayers, supra; Fitts* v. *McGhee* (1899) 172 U. S. 516. However, since a State can act only through its officers, every act done by them in its behalf, whether upon valid authority or not, affects the interests of the State in a greater or less degree. It is evident, on the other hand, that the mere fact of being a State officer and acting to benefit the State, should not be enough to shield all illegal acts under the doctrine of State immunity from suit. Limits to the doctrine being once recognized, it is natural from the very complexity and extent of the situations arising under State official actions, that the exact limits should be fixed, not by any broad principle supplying a universal criterion, but by a number of narrower rules, each applicable to its special class of cases. *Fitts* v. *McGhee, supra,* 516, 528; *Reagan* v. *Farmers' Loan & Trust Company* (1894) 154 U. S. 362, 390. The best classification of these authorities is based upon the subject matter of the suit: State contracts, torts by State officials, property owned by the State, special financial interests of the State, and suits affecting the discretion of State officers.

The first two classes are well settled. A suit against a State officer, the real purpose of which is to obtain specific performance of the State's contract, is a suit against the State; *Hagood* v. *Southern* (1886) 117 U. S. 52; *North Carolina* v. *Temple* (1890) 134 U. S. 22; *Louisiana* v. *Jumel* (1882) 107 U. S. 711; *In Re Ayers, supra;* but a State officer about to commit a tort under color of an unconstitutional statute is not protected. *Pennoyer* v.